

### **REMARKS**

This is a full and timely response to the non-final Office Action of April 3, 2006.

Reexamination, reconsideration, and allowance of the application and all presently pending claims are respectfully requested.

Upon entry of this Fourth Response, claims 1-27, 29-32, and 34-45 are pending in this application. Claims 1-3, 11-13, 17-19, 21, 27, and 32 are directly amended herein, and claims 39-45 are newly added. Further, claims 28 and 33 have been canceled without prejudice or disclaimer. It is believed that the foregoing amendments add no new matter to the present application.

On December 20, 2005, Applicants filed a RCE along with a Third Response adding claims 34-38. However, it does not appear that new claims 34-38 have been examined, and the Office Action Summary indicates that only claims 1-33 are pending. Applicants respectfully request that the Examiner reconsider the amendments set forth in the Third Response of December 20, 2005, before the mailing of the next paper.

### **Attorney Docket Number**

Since the filing of the instant application, the power of attorney has been changed to a new law firm, Thomas, Kayden Horstemeyer & Risley, L.L.P. ("TKHR"). Applicants respectfully request that the attorney docket number of the instant application be changed to "710101-1020" to reflect the number used by TKHR.

### Response to §102 and §103 Rejections

A proper rejection of a claim under 35 U.S.C. §102 requires that a single prior art reference disclose each element of the claim. See, e.g., *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983).

#### Claim 1

Claim 1 presently stands rejected under 35 U.S.C. §102 as allegedly being anticipated by *Sven* (U.S. Patent Application Publication No. 2003/0005099 A1). Claim 1 presently reads as follows:

1. A communication system, comprising:  
a plurality of clients;  
a plurality of network elements; and  
an element management system (EMS) interfaced with the clients and the network elements, the EMS configured to track which of the network elements are of interest to the clients, ***the EMS further configured to automatically poll the network elements based on which of the network elements are determined, by the EMS, to be of interest to the clients***, the EMS further configured to provide the clients with information indicative of the polled elements. (Emphasis added).

Applicants respectfully assert that *Sven* fails to disclose at least the features of claim 1 highlighted hereinabove. Accordingly, the 35 U.S.C. §102 rejection of claim 1 is improper.

In this regard, claim 1 has been amended herein to include the features of canceled claim 28. In rejecting claims 1 and 28, it is alleged in the outstanding Office Action that above the features of amended claim 1 are disclosed by *Sven* at Paragraph 52, lines 1-18, and Paragraph 18, lines 10-17. See Pages 3 and 7 of the Office Action. Applicants respectfully disagree.

In particular, Paragraph 52 of *Sven* indicates that clients 210 may subscribe to an “event manager 250 for property change events for those respective device properties that the client 210

controls.” However, there is nothing in *Sven* to indicate that the manner in which the devices 210 are *polled* is in any way affected by which clients 210 have subscribed to property change events. Indeed, Paragraph 52 of *Sven* does not even discuss the manner in which the devices 210 may be polled. Instead, Paragraph 52 describes the actions taken by the event manager 250 *once the event manager 250 has discovered a property change for a device 205*. In particular, *Sven* teaches that “*when a property for a device 205 changes*, the event manager 250 identifies the clients 210 that have subscribed to that property and forwards the change information to those clients 210 the next time the client 210 polls the event manager 250 for an update.” Paragraph 52, lines 11-15, (emphasis added). Moreover, even if it is assumed *arguendo* that the event manager 250 learns of a property change for a device 205 by polling the device 205, it appears that such a polling operation would not be based on which clients have subscribed to property change events.

In addition, Paragraph 18, lines 10-17, indicates that each “software controllable device has an associated control object (CO)” that allows the event manager “to remotely control or query a physical device.” Such a section suggests that the event manager 250 may query the devices 205. However, there is nothing in Paragraph 18 to indicate that the event manager 250 “automatically polls” the devices 205 based on which of the devices 205 are determined to be of interest to the clients.

For at least the reasons set forth above, Applicants respectfully assert that the Office Action fails to establish that the alleged “EMS” of *Sven* is configured to “*automatically poll* the network elements *based on which of the network elements are determined*, by the EMS, *to be of interest to the clients*,” as described by claim 1. Accordingly, Applicants respectfully assert that *Sven* fails to

disclose each feature of claim 1, and the 35 U.S.C. §102 rejection of claim 1 should, therefore, be withdrawn.

**Claims 2-10, 27, 29-31, and 34-45**

Claims 2-10, 27, and 29-31 presently stand rejected in the Office Action under 35 U.S.C. §102 as allegedly being anticipated by *Sven*. Further, claims 6-10 presently stand rejected in the Office Action under 35 U.S.C. §103 as allegedly being unpatentable over *Sven* in view of *Bero* (U.S. Patent No. 6,895,431). In addition, claims 39-44 have been newly added via the amendments set forth herein. Applicants submit that the pending dependent claims 2-10, 27, 29-31, and 34-45 contain all features of their respective independent claim 1. Since claim 1 should be allowed, as argued hereinabove, pending dependent claims 2-10, 27, 29-31, and 34-45 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

**Claim 11**

Claim 11 presently stands rejected under 35 U.S.C. §102 as allegedly being anticipated by *Sven*. Claim 11 presently reads as follows:

11. An element management system (EMS) for managing elements of a communication network, comprising:  
*means for tracking which of the network elements are of interest to a plurality of clients;*  
*means for automatically polling the network elements of interest to the clients based on the tracking means;* and  
means for providing the clients with information indicative of the polled elements. (Emphasis added).

For at least reasons similar to those set forth in the arguments for allowance of claim 1, Applicants respectfully assert that *Sven* fails to disclose at least the features of claim 11 highlighted hereinabove. Accordingly, the 35 U.S.C. §102 rejection of claim 11 should be withdrawn.

### **Claims 12-16**

Claims 12-14 presently stand rejected in the Office Action under 35 U.S.C. §102 as allegedly being anticipated by *Sven*. Further, claims 15 and 16 presently stand rejected in the Office Action under 35 U.S.C. §103 as allegedly being unpatentable over *Sven* in view of *Bero*. Applicants submit that the pending dependent claims 12-16 contain all features of their respective independent claim 11. Since claim 11 should be allowed, as argued hereinabove, pending dependent claims 12-16 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

### **Claim 17**

Claim 17 presently stands rejected under 35 U.S.C. §102 as allegedly being anticipated by *Sven*. Claim 17 presently reads as follows:

17. A method for managing elements of a communication network, comprising the steps of:  
***tracking which of the network elements are of interest to a plurality of clients;***  
***automatically polling the network elements based on the tracking step;*** and  
providing the clients with information indicative of the polled elements.  
(Emphasis added).

For at least reasons similar to those set forth in the arguments for allowance of claim 1, Applicants respectfully assert that *Sven* fails to disclose at least the features of claim 17 highlighted hereinabove. Accordingly, the 35 U.S.C. §102 rejection of claim 17 should be withdrawn.

#### **Claims 18-26 and 32**

Claims 18-21 and 32 presently stand rejected in the Office Action under 35 U.S.C. §102 as allegedly being anticipated by *Sven*. Further, claims 22-26 presently stand rejected in the Office Action under 35 U.S.C. §103 as allegedly being unpatentable over *Sven* in view of *Bero*. Applicants submit that the pending dependent claims 18-26 and 32 contain all features of their respective independent claim 17. Since claim 17 should be allowed, as argued hereinabove, pending dependent claims 18-26 and 32 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).



**CONCLUSION**

Applicants respectfully request that all outstanding objections and rejections be withdrawn and that this application and all presently pending claims be allowed to issue. If the Examiner has any questions or comments regarding Applicants' response, the Examiner is encouraged to telephone Applicants' undersigned counsel.

Respectfully submitted,

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